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17 Attorneys for Debtor

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20 IN THE UNITED STATES BANKRUPTCY COURT

21 FOR THE DISTRICT OF OREGON

22 In re

23 McGrath's Publiick Fish House, Inc.,

24 Debtor.

25 Case No. 10-60500-aer11

26 **DEBTOR'S MOTION FOR
INTERIM AND FINAL
AUTHORITY TO USE CASH
COLLATERAL**

***EXPEDITED HEARING
REQUESTED***

20 Pursuant to 11 U.S.C. § 363(c) and Bankruptcy Rule 4001(b),
21 McGrath's Publiick Fish House, Inc. ("Debtor" or "Debtor-In-Possession") moves this Court
22 for an order (a) authorizing Debtor to use cash collateral on a temporary basis at two of
23 Debtor's restaurants until a final hearing can be held on this motion; and (b) after a final
24 hearing held pursuant to Bankruptcy Rule 4001(c)(2), a final order authorizing Debtor to use
25 cash collateral during the pendency of this case. In support of this motion, Debtor states as
26 follows:

1 1. On February 3, 2010 (the "Petition Date"), Debtor filed a voluntary
2 petition for relief under Chapter 11 of Title 11 of the United States Code.

3 2. Debtor has continued in possession of its property and is continuing to
4 operate and manage its business as debtor-in-possession pursuant to Sections 1107(a) and
5 1108 of the Bankruptcy Code.

6 3. The Court has jurisdiction over this matter pursuant to 28 U.S.C.
7 § 1334(b) and the standing order of reference of the District Court. This matter is a core
8 proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 and
9 1409.

10 4. No request has been made for the appointment of a trustee or an
11 examiner, and no official committee has yet been established in this case.

12 5. Debtor is an Oregon corporation, incorporated in 1980, that owns and
13 operates a chain of seafood restaurants, known as McGrath's Fish House. Since Debtor
14 opened its first restaurant 30 years ago, its business has grown to include 20 McGrath's Fish
15 House restaurants in Oregon, Washington, Idaho, Utah, Arizona, and Colorado. Debtor's
16 corporate office is in Salem, Oregon.

17 6. A number of the restaurants that Debtor operates are quite profitable.
18 However, there are also a number of restaurants that are unprofitable, and the losses
19 generated by those restaurants impair Debtor's ability to pay debt service and other expenses.
20 Debtor has filed this bankruptcy case to provide, among other things, an orderly means to
21 restructure the obligations relating to the unprofitable restaurants, or failing that, to close
22 them.

23 7. Debtor has entered into various loan and security agreements with
24 lenders pertaining to its various restaurants. Two of those lenders are secured by a security
25 interest in Debtor's inventory at certain restaurant locations. Specifically, GE Capital
26 Franchise Finance Corporation ("GE Capital Franchise Finance") has a security interest in

Debtor's inventory at its Alderwood restaurant in Lynwood, Washington, and Arizona Business Bank has a security interest in Debtor's inventory at its Goodyear, Arizona restaurant (GE Capital Franchise Finance and Arizona Business Bank are collectively herein, the "Lenders"). Debtor has a need to use the cash collateral of the Lenders in order to continue its operations at its Alderwood restaurant pending resolution of Debtor's motion to reject the Alderwood lease and at its Goodyear restaurant in order to preserve the value of Debtor and its estate.

GE Capital Franchise Finance

8. On or about August 17, 2004, Debtor entered into an Equipment Loan and Security Agreement with GE Capital Franchise Finance in the original principal amount of \$1,082,800, which was subsequently amended and restated in the original principal amount of \$1,320,000 and secured by an interest in all Debtor's right, title, and interest, in all tangible personal property located at the Alderwood location, including all machinery, appliances, furniture, equipment and inventory. The current amount owing on the loan is approximately \$1,156,126.32.

Arizona Business Bank

9. Debtor entered into a loan agreement with Arizona Business Bank. The current principal balance is approximately \$2,296,715.25. This obligation is secured by, among other things, inventory at the Goodyear restaurant.

Cash Collateral and Adequate Protection

10. In order to preserve and maintain the assets of this bankruptcy estate, Debtor requires the use of cash generated from its Alderwood and Goodyear restaurants for the payment of ongoing operating expenses at those respective restaurants.

11. Debtor has prepared budgets setting forth the amounts necessary for Debtor's continued operations at the Alderwood restaurant and the Goodyear restaurant. Debtor's budgets project the amounts Debtor will need on an interim basis for payment of

1 operating expenses at those restaurants pending a final hearing on this matter. Debtor's
2 budgets then project the amounts Debtor will need thereafter as additional expenses
3 necessarily incurred for Debtor's continued operations. The Alderwood restaurant budget for
4 the use of cash collateral on which GE Capital Franchise Finance claims an interest is
5 attached hereto as Exhibit A. The Goodyear restaurant budget for which Arizona Business
6 Bank claims an interest is attached hereto as Exhibit B.

7 12. It is in the best interest of Debtor, its creditors, and its estate for Debtor
8 to use the Lender's cash collateral because the use of cash collateral will allow the continued
9 operation of Debtor as a going concern and will maximize the likelihood of reorganization,
10 thereby maximizing the recovery to all creditors.

11 13. To provide adequate protection for the use by Debtor of cash in which
12 each Lender claims or may claim an interest, Debtor proposes to grant each Lender a
13 replacement security interest and lien. The replacement security interest and lien upon the
14 assets from and after the Petition Date shall be of the same category, kind, character, and
15 description as were subject to the perfected and valid security interest in existence on the
16 Petition Date. The adequate protection lien granted to Lenders shall not enhance or improve
17 their respective positions.

18 14. To preserve the value of Debtor as a going concern, Debtor requires
19 the use of cash collateral in which the Lenders claim an interest as described above.

20 15. Debtor will suffer immediate and irreparable harm if it is not permitted
21 to use the cash collateral in which the Lenders claim an interest. Without use of the cash,
22 Debtor's operations at the Alderwood restaurant and the Goodyear restaurant will need to
23 immediately cease.

24 16. None of the provisions listed in LBF 541.7 are included in this motion
25 or the proposed order.

26 * * *

1 17. A copy of the proposed interim order authorizing use of cash collateral
2 and granting adequate protection is attached hereto as Exhibit C.

3 WHEREFORE, Debtor prays that this court enter an interim order
4 (a) authorizing Debtor to use cash collateral, pending a final hearing on this motion;
5 (b) granting to the Lenders adequate protection as herein proposed or is otherwise approved
6 by the Court; and (c) setting a final hearing on this motion.

7 DATED this 3rd day of February, 2010.

8 TONKON TORP LLP

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10 By /s/ Leon Simson

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21 Attorneys for Debtor
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EXHIBIT A

	17 Alderwood	17 Alderwood
	P1 2010	P2 2010
Sales	199,142.00	172,704.00
COGS	57,377.00	49,297.00
Gross Profit	141,765.00	123,407.00
Labor	78,284.00	69,401.00
Total Mgr Controllable Exp	15,160.00	12,818.00
Total Other Oper Expenses	23,073.00	19,688.00
Occupancy Expenses	18,082.00	23,907.00
Total Operating and Occupancy Costs	134,599.00	125,814.00
Total Oper Income (loss)	7,166.00	(2,407.00)
Total G&A	6,705.00	6,705.00
EBITDA \$\$\$	4,577.00	(5,198.00)

EXHIBIT B

	19 Goodyear	19 Goodyear	19 Goodyear
	P1 2010	P2 2010	P3 2010
Sales	138,762.00	154,549.00	158,543.00
COGS	39,588.00	42,508.00	44,294.00
Gross Profit	99,174.00	112,041.00	114,249.00
Labor	46,585.00	48,085.00	51,409.00
Total Mgr Controllable Exp	7,625.00	8,260.00	8,351.00
Total Other Oper Expenses	14,797.00	14,705.00	16,628.00
Occupancy Expenses	29,470.00	29,470.00	29,470.00
Total Operating and Occupancy Costs	98,477.00	100,520.00	105,858.00
Total Oper Income (loss)	697.00	11,521.00	8,391.00
General & Admin Expenses	6,705.00	6,705.00	6,705.00
EBITDA \$\$\$	(2,723.00)	8,488.00	6,371.00

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

McGrath's Publick Fish House, Inc.,

Debtor.

Case No. 10-60500-aer11

**[PROPOSED] ORDER GRANTING
DEBTOR'S MOTION FOR
INTERIM AND FINAL
AUTHORITY TO USE CASH
COLLATERAL**

THIS MATTER having come before the Court upon Debtor's Motion for Interim and Final Authority to Use Cash Collateral filed by McGrath's Publick Fish House, Inc. ("Debtor"), a hearing having been held before the Court, and the Court having reviewed the Motion and accompanying statements, and being otherwise duly advised in the premises; NOW, THEREFORE,

IT IS HEREBY ORDERED as follows:

1. For the interim period pending a final hearing on this matter, Debtor be and hereby is authorized to use cash collateral in which GE Capital Franchise Finance Corporation ("GE Capital Franchise Finance") and Arizona Business Bank have an interest in accordance with and for the purposes set forth in the budgets attached hereto as Exhibits A and B.

2. As adequate protection for the use by Debtor of cash collateral in which GE Capital Franchise Finance and Arizona Business Bank claim or may claim an interest, Debtor will grant each GE Capital Franchise Finance and Arizona Business Bank a replacement security interest and lien. The replacement security interests in and lien upon the assets shall be of the same category, type, kind, character, and description as were subject to the perfected and valid security interests in existence on the Petition Date and will have the same relative priority as any valid and unavoidable lien held by GE Capital Franchise Finance and Arizona Business Bank as of the Petition Date. The liens and security interest to be granted to GE Capital Franchise Finance and Arizona Business Bank will be granted for adequate protection purposes only, and will not enhance or improve their respective positions.

IT IS FURTHER ORDERED that a final hearing on Debtor's Motion for Authority to Use Cash Collateral shall be held by the Court in Courtroom No. __ of the United States Bankruptcy Court for the District of Oregon, Wayne L. Morse Courthouse, 405 East 8th Avenue, Suite 1100, Eugene, Oregon 97401, on February ____, 2010, at _____.m., or as soon thereafter as counsel may be heard. Within three (3) business days after the

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entry hereof, Debtor shall mail or otherwise serve a copy of this Order, together with a Notice of the final hearing pursuant LBR 4001-1D and LBF 541.50.

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Presented by:

TONKON TORP LLP

By _____
Leon Simson, OSB No. 753429 (Lead Attorney)
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Attorneys for Debtor

cc: List of Interested Parties

034434/00001/1976637v1

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEBTOR'S MOTION FOR INTERIM AND FINAL AUTHORITY TO USE CASH COLLATERAL** on the parties indicated as "ECF" on the attached List of Interested Parties by electronic means through the Court's Case Management/Electronic Case File system on the date set forth below.

In addition, I served the foregoing on the parties indicated as "Non-ECF" on the attached List of Interested Parties:

☒ by faxing a copy thereof to each party at their last-known facsimile number and by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each attorney's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below; except Top 20 creditors Alderwood Mall LLC and RPP Bend I, LLC who were served via US mail and via electronic mail

☐ by causing a copy thereof to be hand-delivered to said attorneys at each attorney's last-known office address on the date set forth below;

☐ by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to each attorney's last-known address on the date set forth below; or

☐ by faxing a copy thereof to each attorney at his last-known facsimile number on the date set forth below.

DATED this 3rd day of February, 2010.

TONKON TORP LLP

By /s/ Leon Simson

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Timothy J. Conway, OSB No. 851752
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034434/00001/1976284v1

LIST OF INTERESTED PARTIES

In re: McGrath's Publick Fish House, Inc.,
U.S. Bankruptcy Court Case No. 10-60500-aer11

ECF PARTICIPANTS

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Phone 541-465-6330
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NON-ECF PARTICIPANTS

SECURED LENDERS

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Towson, MD 21286
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Arizona Business Bank
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Bank of the West
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**TOP 20 (Not including deficiency
claimants already listed above)**

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Duck Delivery Produce Inc
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